

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRTIETH REGION

Appleton, Wisconsin

U.S. PAPER CONVERTERS, INC.

Employer

and

Case 30-UC-381

PAPER, ALLIED-INDUSTRIAL, CHEMICAL, ENERGY  
WORKERS INTERNATIONAL UNION (PACE)<sup>1</sup>

Petitioner

**DECISION AND ORDER DENYING  
PETITION FOR UNIT CLARIFICATION**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this case, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is a Wisconsin corporation engaged in the business of paper converting. During the past calendar year, a representative period, the Employer sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Wisconsin. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The name of the Petitioner appears as amended at the hearing.

<sup>2</sup> No briefs were filed in this matter.

3. The Petitioner (hereinafter Union) is a labor organization within the meaning of the Act.

4. On April 16, 1993, the Union in Case 30-RC-5447 was certified by the Board as the exclusive bargaining representative for employees in the following unit:

All full-time and regular part-time production and maintenance employees including warehouse employees and truck drivers; but excluding office clerical employees, guards and supervisors as defined in the Act.

The most recent collective-bargaining agreement between the parties covering the above-described employees is effective from December 1996 until November 1, 1999.

5. On December 28, 1998 the Union filed its original petition and on January 15, 1999 an amended petition herein. The Union by its amended petition seeks to clarify the bargaining unit to include four individuals: Jason Thurber, Gary Palmback, Dan Black and Henry Ross. In the record they are sometimes referred to leadmen, foremen or jeep drivers. The Union asserts these individuals are properly included in the unit and that they are not supervisors within the meaning of the Act. The Employer, contrary to the Union, asserts the four named individuals are supervisors within the meaning of the Act.

6. The Employer employs about 70 employees in the unit under its contract classifications of: utility (including helpers and packers); jeep; saw; bailer and trimmer operators; winder and sheet operators; and, mechanics.<sup>3</sup> Employees work on three shifts with some employees working 12-hour shifts.

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<sup>3</sup> The parties stipulated that the following individuals are supervisors or managers within the meaning of the Act: Lyle Reigel, president; Richard Doyle, vice-president of operations; David Chevalier, plant manager; and, Jeff Sedo, Robert Pitt, Tom Springstrom, Gary Stelter and Mark Marshburn, all classified as foreman. The parties' stipulation and the record reflect the above individuals can hire, fire and assign work or recommend such action, and that said actions require the exercise of independent judgment. Based on the foregoing I find that they are supervisors within the meaning of the Act and properly excluded from the unit.

Jay Nienhous, the Union's local president and a driver in the shipping department, and David Chevalier testified at the hearing in this matter. The four disputed individuals all work in the shipping department. The Employer in its opening comments described its position as follows:

Our position is that we have always had a supervisory positions in our shipping, receiving, warehousing. We have not made any changes other than the individuals who, over the course of time in the last six years, have changed and we have continued business as usual.

In further support of its position the Employer introduced a "Position Summary for Night Warehouse Supervisor." This summary outlines the duties of the night warehouse supervisor and was executed by Chevalier, the former local union president Trichel, and the night warehouse supervisor at the time, David Jones. According to Chevalier, Trichel agreed the supervisor position was excluded from the bargaining unit. No similar executed documents were offered reflecting the duties and responsibilities of the four disputed individuals.

Thurber, Palmbach, Black and Ross are all principally jeep drivers, and perform duties similar to Union president Nienhous but generally on different shifts. Nienhous testified that his duties include pulling roll orders for machines, laying rolls down by machines, picking up the header machine when rolls are finished, unloading and loading trucks, and moving skids.

Chevalier testified he decides significant employment actions such as hire, fire, transfer, promotion, layoff and the granting of pay increases. The record suggests that the disputed individuals have on occasion issued written comments about other employees; but actions such as disciplinary suspensions would again be determined by Chevalier. The record contains a single "employee occurrence sheet" issued by Dan Black to Nienhous. The impact of such an "occurrence" and whether it is independently evaluated is not established by the record. Likewise, the frequency that such "occurrences" are issued and by whom has not been

established. The record also suggests that the disputed individuals may have some involvement in grievance adjustment but the nature and extent of such adjustment is again unclear. The record does not reflect the pay rates for any of the employees or admitted supervisors although the collective bargaining agreement does establish contract minimums. It appears employees and supervisors all have the same benefit package.

### ANALYSIS

The Board in *Union Electric Company*, 217 NLRB 666 (1975) described the purpose of a unit clarification proceeding as follows:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category -- excluded or included -- that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent. Footnote omitted, Id 667.

The Union, contrary to the Employer, asserts no recent substantial changes have occurred in the duties of the four foreman/leadman/jeep operators so as to warrant their exclusion as supervisors from the bargaining unit. Given the state of this record I agree with the Union. The Employer's own records continue to reflect that Thurber, Palmbach, Black and Ross continue to be listed on the Employer's weekly schedules as jeep drivers, a classification within the bargaining unit. (See Pet. Exh. 1). This contrasts with treatment accorded to the stipulated statutory supervisors Sedo, Pitt and Springstrom who are identified by the Employer as "foreman" on the work schedule. In concluding the four disputed employees should not be excluded from the bargaining unit, I have also compared the Employer's treatment of these four disputed "leadmen" with the Employer's

April 25, 1997 treatment of “night warehouse supervisor” (see Employer Exh. 1). In the earlier situation the Employer unmistakably created a “supervisor” position with detailed supervisory responsibilities. Union and employee acknowledgment were secured. No such conduct occurred here.<sup>4</sup> Thus, it appears Thurber, Palmbach, Black and Ross continue to perform work substantially identical to other jeep drivers. The Employer has made no showing of a significant change in their work or duties, and their classifications have been in existence since the Board’s certification of the Union in Case 30-RC-5447.

It is well established that the burden of establishing supervisory status rests on the party claiming the existence of such status. *Bennett Industries, Inc.*, 313 NLRB 1363 (1994). The showing in this case is deficient. The record is inconclusive or is in conflict as to whether any supervisory *indicia* have been exercised by the four disputed individuals. Inconclusive evidence does not establish supervisory status. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

In this case, principal supervisory authority (hire, fire, discipline and reward) is exercised by plant manager Chevalier, and to a lesser extent by stipulated supervisors and managers. The exercise of supervisory authority requiring the exercise of independent judgment by the four disputed employees has not been established.

Based upon the foregoing and the entire record, I find that Jason Thurber, Gary Palmbach, Dan Black and Henry Ross are not supervisors within the meaning of Section 2(11) of the Act and these employees are properly included in the unit. I also find and conclude that the individuals are performing the same job functions as were performed when the Union obtained certification.

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<sup>4</sup> The record is unclear as to whether the Employer had at any time treated these four disputed individuals as being part of the bargaining unit and has only contended that their duties recently have changed to exclude them from the

### **ORDER DENYING UNIT CLARIFICATION**

IT IS HEREBY ORDERED that the petition herein be denied as it is unnecessary to clarify the unit to include Jason Thurber, Gary Palmbach, Dan Black and Henry Ross in the bargaining unit.<sup>5</sup> Rather, I find that these four individuals are included in the unit by reason of their already holding job classifications included in the unit and their not being supervisors within the meaning of the Act.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by April 14, 1999.**

Signed at Milwaukee, Wisconsin this 31<sup>st</sup> day of March 1999.

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Irving E. Gottschalk, Acting Regional Director  
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unit. The parties within the last several months have discussed the placement of the disputed employees in the bargaining unit, however, no agreement has been reached.

<sup>5</sup> This Decision does not constitute a recertification of the union.